

**STUDY OF CONFINEMENT
IN
MISSOURI**

September 2003

**Prepared for the Missouri Department of Public Safety
and the State Juvenile Justice Advisory Group**

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OF STATUS OFFENDERS IN MISSOURI

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In 2002, the Department of Criminal Justice and Legal Studies at Missouri Western State College in St. Joseph, Missouri initiated a juvenile justice research project with funds from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention and provided through a grant from the Missouri Department of Public Safety and the State Juvenile Justice Advisory Group.

Our purpose: To determine Missouri's compliance with federal DSO mandates on the confinement of status offenders.

The report that follows summarizes our findings.

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Executive Summary
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EXECUTIVE SUMMARY

Purpose of This Report

- “ Evaluate Missouri's success in complying with federal mandates to deinstitutionalize status and non-offenders (DSO).
- “ Determine what steps Missouri should take to eliminate existing and potential violations that could cause the state to be out of compliance.

DSO Compliance: an Explanation

The Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 called for DSO nationwide. One provision of the amended act is the focus of this study: that neither status nor non-offenders shall be placed in secure juvenile detention or correctional facilities. If an out-of-home placement is required, they must be placed in a non-secure facility, where the movements and activities of those in custody are controlled or "secured" entirely by staff, rather than by implements or physical barriers.

The term status and non-offenders encompasses 1) youngsters who have committed acts that would not be crimes for adults, such as running away from home or skipping school, and 2) children who have done nothing wrong, but due to abuse, neglect or other circumstances beyond their control, they cannot remain with their families.

The intent of the JJDP Act is to protect these relatively innocent children from harm. One way the law protects them is to ensure that status and non-offenders in the custody of the state are not housed with hardened juvenile delinquents. Instead, they are to be placed in the least possible restrictive, non-secure community-based facilities.

An important objective of DSO mandates is to intervene early in the cycle of misbehavior, giving children the guidance and other support they need to get their lives on track.

Missouri's Current DSO Compliance Status

Missouri is currently in compliance with DSO mandates.

Compliance means that all status and non-offenders in the custody of the state must be placed in non-secure facilities. A violation occurs when a status or non-offender is placed in a secure environment -- be it a jail, lock-up or secure juvenile facility -- for more than 24 hours without a valid court order.

To be in compliance with DSO mandates, a state cannot exceed 29.4 violations per 100,000 youth under age 17. Missouri's violation rate is 5.8 per 100,000 youth under age 17.

Serious Threats to Missouri's Compliance Status

Missouri's low DSO violation rate does not include any potential violations that occurred in state mental health facilities and DFS residential care facilities, where status and non-offenders are frequently placed. That's because Missouri, like many other states, is not yet monitoring DFS residential care or mental health facilities for DSO compliance. If they were, these facilities would be extremely vulnerable to DSO violations.

Key Residential Care Issues

Missouri does not have enough non-secure facilities for status and non-offenders. This is especially true in some rural areas of the state, where non-secure, out-of-home placement options are extremely limited. Additionally, some residential care facilities have what is known as level four or "secure" beds, which status and non-offenders are by law prohibited from occupying.

Compliance and Related Concerns:

- “ A status or non-offender might be placed in a secure facility when a non-secure one is not available.
- “ A child in a non-secure residential care facility with level four areas could, for a variety of reasons that might be in the best interest of the child, be temporarily placed in a secure environment within the facility. Without a valid court order, this would be a violation of DSO mandates.

Key Mental Health Issues

Some status and non-offenders have serious mental health problems. But both DSO mandates and state budget constraints prevent some children from getting the mental health care they desperately need.

Compliance and Related Issues

- “ Missouri has a declining number of mental health beds available to youth. This is an issue because every year hundreds of status and non-offenders are placed in mental health facilities, most of whom are referred by DFS residential care facilities concerned about significant behavior problems among the children in their care.
- “ There is a severe shortage of appropriate non-secure facilities for youth transitioning from the mental health system to the community.
- “ And finally, the *Catch 22* of DSO compliance. Because all mental health facilities are by nature secure, any placement of a status or non-offender in a mental health facility is a technical violation of DSO mandates.

Why You Should Care

In 2001, 7,303 status and non-offenders were placed in out-of-home care in Missouri. At least a small portion of these youngsters ended up in secure placements in facilities not yet monitored for DSO compliance. If and when these facilities are monitored, there could be enough DSO violations to put Missouri out of compliance.

Like Missouri, many other states are working hard to maintain their DSO compliance status, as we learned from our state surveys. Most are struggling with the same residential care and mental health issues that plague Missouri. In fact, only 40 percent of states participating in our survey monitor

their residential care facilities for DSO compliance, and less than 25 percent monitor their mental health facilities.

Missouri or any other state that is found to be out of compliance in the future risks losing vital JJDP formula grants.

Recommendations

The recommendations that follow should help Missouri retain its DSO compliance status and, at the same time, honor the best interest of the children of Missouri.

- .. Establish more non-secure facilities to house status and non-offenders.

What Should Be Done

Establish large non-secure facilities, housing up to 30 youth, that could serve several circuits.

Establish shelter care and foster group homes, housing up to 10 youth, that could serve individual circuits.

Who Pays

The Missouri General Assembly must appropriate funds for a large portion of the needed facilities.

The state should aggressively pursue federal and private grants to support this effort. For example, 40 percent of the budget for one non-secure facility in the state -- the Buchanan County Academy -- comes from title 4E for youth under the federal TANF (Temporary Assistance to Needy Families) program.

- .. Reevaluate the Use of Residential Care Facilities That Have Level Four (Secure) Beds Available to Status and Non-Offenders.

Of the 3,500 beds in residential care facilities under contract with DFS, 1,400 or 40 percent are considered secure beds, which are not appropriate for status and non-offenders. This creates multiple opportunities for DSO violations.

- .. Ensure that In-Patient Mental Health Care Is Available to Status and Non-Offenders Who Need It.

What Should Be Done

The state should reevaluate its mental health budget to ensure that there is adequate funding for mental health beds for juveniles.

The juvenile system should more closely monitor the transfer of status and non-offenders in mental health facilities. A major concern is that a facility that serves as the court-ordered placement for a youth does not transfer him/her to a mental health facility without notifying the court.

- .. Ensure That Youth Leaving the Mental Health System Are Transferred to Appropriate Placements.

What Should Be Done

The state should consider developing halfway houses and foster group homes specifically designed to meet the needs of youth transitioning from mental health care back into the community.

DFS could play a pivotal role in developing these transitional options.

- .. Provide the Additional Services That Chronic Runaways and Other Chronic Status Offenders Need to Get Their Lives Back on Track.

What Should Be Done

The juvenile system should offer all youth who need it intensive probation that *includes regular surveillance to ensure that youth are in compliance with the conditions of their probation.*

It should also develop other diversionary services that are viable options to residential care facilities, from which some chronic status offenders routinely flee.

METHODOLOGY

Project researchers surveyed officials in Missouri, in other states as well as in the federal government to 1) determine the level of compliance with federal DSO mandates, and 2) gather information about the various strategies that states have used to meet the requirements of compliance.

Missouri Surveys and Other Contacts

- “ We surveyed juvenile court judges serving the 45 Missouri circuits to determine their policies and procedures for the placement of status and non-offenders. We also wanted information about how notification was handled when a status or non-offender is moved within a facility or to another place.

- .. We surveyed the residential care facilities that contract with the Division of Family Services to provide out-of-home care for status and non-offenders. We wanted to determine whether these facilities had multiple security levels, ranging from non-secure to secure, and the policies and procedures for moving a youth from one level to another.
- .. We surveyed Department of Mental Health facilities that house youth. We wanted to determine the number of status and non-offenders placed in these facilities as well as what agency or other entity made the initial referral for each youth.
- .. We contacted the Chief Juvenile Officers in Missouri circuits where there appears to be no non-secure placements available and/or to gather information about how these circuits deal with status and non-offender placements. Circuits contacted included the 3rd, 4th, 5th, 23rd, 33rd, 37th, 42nd and 43rd.
- .. We contacted the Missouri Juvenile Justice Association (MJJA), which provided data related to its DSO compliance monitoring. This included a listing of all the detention facilities, secure residential facilities and non-secure facilities that MJJA monitors for the state.
- .. We spoke with many individuals who expanded on the information provided by the surveys or supplied new information not accessible through the surveys. This included Dennis Gragg of the Division of Youth Services, from whom we obtained considerable information about DYS facilities and processes.

Other Surveys and Contacts

- .. We surveyed the 49 states (Missouri excluded) about a variety of DSO compliance issues. We followed up the first survey with more in-depth telephone interviews. The second interviews addressed more specific issues related to juvenile placements -- ranging from non-secure to secure -- at mental health facilities as well as at residential care facilities that contract with states' social services departments.
- .. We contacted the compliance monitoring coordinator at the Office of Juvenile Justice and Delinquency Prevention for information about the current DSO compliance status of all 50 states.

Other Resources

- .. We studied numerous Missouri publications that provided data or other information about DSO compliance: The Missouri 2001 Juvenile Court Statistics Report; The Division of Youth Services Annual Report 2002; Children's Services Annual Report 2002 from the Department of Social Services, Division of Family Services; and the Missouri Revised State Statutes 2002. (Note: At the time of this study, the 2002 Juvenile Court Statistics Report was not available.)

- .. We reviewed Department of Mental Health case files on some status and non-offenders to collect additional background material related to DMH and DSO mandates.
- .. We reviewed current literature on the research others have done on DSO, including the types of out-of-home placements that are being used for status and non-offenders in the United States.

INTRODUCTION

Essential Definitions and Abbreviations

The following terms and abbreviations are widely used in this report.

Terms

Deinstitutionalization of Status Offenders: A national movement, codified by the federal Juvenile Justice and Delinquency Prevention Act of 1974, to ensure that juvenile status offenders are not placed in secure, jail-like facilities that restrict their activities and movements. The goal is to place status offenders in community-based facilities that prioritize treatment over punishment. As used in this report, the term "deinstitutionalization of status offenders" or DSO encompasses both status offenders and non-offenders.

Status Offender: A juvenile who has been charged with or adjudicated for conduct that would not, under the law of that state, be a crime if committed by an adult. Typical status offenses include truancy, curfew violations, running away from home, ungovernable behavior and tobacco or alcohol violations.

Non-Offender: A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct.

Dependent Child: A term widely used in earlier generations to describe an abused, neglected and/or abandoned child under the custody of the juvenile court. Dependent child and non-offender mean essentially the same thing. However, non-offender is the preferred usage today.

Secure Custody: Secure detention or correctional facilities -- including residential facilities -- contain construction features designed to physically restrict the movements and activities of persons in custody (e.g. locked rooms and buildings, fences, or other physical structures). Also considered secure are those facilities that contain doors with delayed egress devices that have not received written approval by the authority having jurisdiction over fire codes and/or fire inspections in the area where the facility is located. The egress delay must never exceed the time delay allowed by the applicable fire code. Devices that exceed a 30-second delay are always considered secure, even though local code may allow for a longer time delay.

Non-Secure Custody: In non-secure facilities, the movements and activities of those in custody are controlled or "secured" entirely by staff. Staff interaction and intervention, in the form of direct supervision, visual observation or physical restriction, is used to prevent a youth from exiting a facility.

For example, a juvenile in the custody of law enforcement would be in non-secure custody if the presence of a law enforcement official -- and not physical barrier or device -- prevented his/her departure.

Shelter Facility: A non-secure facility for children, such as a foster home or group home.

Valid Court Order (VCO) Exception: The exception provides that status offenders found to have violated a Valid Court Order may be securely detained in a juvenile detention or correctional facility.

The VCO exception was included in the 1980 amendments to the Juvenile Justice and Delinquency Prevention Act to address concerns that the DSO mandate deprived juvenile court judges of a significant option in handling certain chronic status offenders. The exception was meant to be applied sparingly to the small number of status offenders that "continually flout the will of the court."

(Guidance Manual-OJJDP, 2001)

Abbreviations

DSO: Deinstitutionalization of Status Offenders. See description above.

DOJ: U.S. Department of Justice

OJJDP: Office of Juvenile Justice and Delinquency Prevention, which is under the jurisdiction of the U.S. Department of Justice.

JJDP Act: The Juvenile Justice and Delinquency Prevention Act

MDPS: Missouri Department of Public Safety

DFS: Missouri Division of Family Services, now referred to as the Children's Division.

DMH: Missouri Department of Mental Health

DYS: Missouri Division of Youth Services

MJJA: Missouri Juvenile Justice Association

Deinstitutionalization of Status Offenders: An Overview

The focus of this report -- complying with federal mandates to deinstitutionalize youth who have committed status offenses -- is an issue of concern for all who care about our children. That's because the consequences of treating miscreant minors like criminals, instead of like the troubled, rebellious youngsters that they are, can last a lifetime.

Historically, juvenile offenders in the U.S. were housed in the same jails and prisons as adults. As a result, many of these impressionable young people, rather than being rehabilitated, learned about crime and violence firsthand from seasoned experts.

By the late 1800s, numerous church groups -- recognizing that children should not be imprisoned with adults -- took the lead in opening so-called Houses of Refuge. Unfortunately, these institutions did not separate seriously delinquent youth from runaways, truants and others guilty of more minor infractions.

Soon after, states began establishing juvenile justice systems, which, philosophically at least, were committed to the rehabilitation of delinquent children. State-sponsored institutions for juveniles were established, including the Missouri Reform School for Boys in Boonville and the State Industrial Home for Girls in Chillicothe, Missouri. These two institutions, as well as juvenile justice institutions throughout the nation, mixed status and dependent children with hard-core delinquents.

As a result, a young girl who had done nothing more than run away from home could easily learn how to sell her body from an experienced teenage prostitute. Or a truant adolescent boy might be taught by experienced delinquents how to deal drugs or hotwire a car.

In the late 1960s, there was mounting public pressure to separate status and non-offenders from hardened juvenile delinquents. The initial impetus was an investigative report by Ken Wooden, entitled *Children in Trouble*. The report, which was televised nationally, exposed the harsh conditions in many juvenile justice facilities. Viewers were especially alarmed to learn that children whose worst crimes were minor by any standards were confined in these institutions.

Today, a growing body of research demonstrates that treating relatively innocent children like criminals -- including confining them in jail-like, highly restrictive facilities -- is the wrong way to develop their character and help prepare them for responsible adulthood.

Legislative History of the DSO Movement

Throughout the late 1960s and early 1970s, there were numerous efforts, both at the state and national level, to deinstitutionalize status offenders (DSO). However, the first successful DSO initiative was introduced in Massachusetts in 1972 by Jerome Miller. Under Miller's guidance, the state closed its large juvenile institutions and developed a system of community-based facilities. This system allowed most juveniles, especially status and non-offenders, to be housed in less harsh and restrictive conditions.

Federal DSO Legislation: JJDP Act of 1974

On the federal level, the first legislation to formally address the DSO issue was the Juvenile Justice and Delinquency Prevention (JJDP) Act, which was introduced in Congress in 1974 and subsequently signed into law. The JJDP Act was established to protect juveniles from inappropriate placement as well as from harm. It was also designed to divert most delinquent youth, particularly status offenders, from institutional settings to more intervention-type, community-based programming.

The Act called for DSO nationwide, mandating that youth committing non-criminal offenses be placed in shelter facilities, such as foster homes and group homes. It required that all juveniles be separated by sight and sound from adult offenders.

Between 1974 and 1992, the JJDP Act was amended and clarified several times. Key issues included 1) defining and expanding the timelines for state compliance; 2) encouraging the use of a greater variety of placement options for status and non-offenders; and 3) requiring the removal of status and non-offenders from physically secure facilities.

Current Federal Protections for Status and Non-Offenders

In 1992, the JJDP Act was amended to include the following four core protections that apply to status and non-offenders:

- .. The deinstitutionalization of status and non-offenders. Neither status nor non-offenders shall be placed in secure juvenile detention or correctional facilities. If an out-of-home placement is required, they should be placed in a non-secure facility, where the movements and activities of those in custody are controlled or "secured" entirely by staff, rather than by implements or physical barriers. States can detain or confine status and non-offenders in a secure juvenile facility for violation of a valid court order.
- .. The removal of juveniles from adult jails and lock-ups. No juvenile status or non-offender shall be detained or confined in any jail or lock-up for adults. Delinquent juveniles can be held in such adult facilities for processing for a maximum of six hours, or 24 hours if the

rural area exception is applied.

- .. The separation of juveniles from adults in institutions. No juvenile shall be detained or confined in any institution in which they have contact with adults who are incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.
- .. A reduction in disproportionate minority confinement. States should identify juvenile facilities where there is a disproportionately high percentage of minority children. Then they should investigate other appropriate, but less restrictive interventions that could be viable alternatives to confinement.

(Guidance Manual-OJJDP, 2001)

The focus of our study will be on the first core protection of the JJDP Act guidelines: the deinstitutionalization of status and non-offenders (DSO).

State Efforts to Comply with Federal DSO Legislation

Today, most states have legislation and policies supporting the deinstitutionalization of status offenders (DSO). There are strong incentives to do so. To receive JJDP formula grants, states must be in compliance with the provisions of the JJDP Act.

Most states have followed one of three different paths in an effort to achieve compliance:

Decarceration: Utilizing alternatives to incarceration, ranging from camps and ranches in California to group homes and residential care facilities in other states.

Divestiture (Decriminalization): Removal of status and non-offenders from the juvenile justice system. This enables states to avoid placements in secure or other sanctioned facilities. However, youngsters released from the jurisdiction of the court may never receive the treatment or support services they need.

Diversion: Referring status and non-offenders to programs and services in the community rather than confining them in a juvenile facility or even placing them under the jurisdiction of the court.

Major Impediments to State Compliance

.. Funding

Many states have a difficult time funding the immense changes required to achieve comprehensive DSO. For example, ensuring that every county or circuit in a state has a non-secure, shelter-type juvenile facility, with 24-hour staffing, is cost-prohibitive. In addition, some states have focused their finite resources on the growing needs of the violent delinquent -- at the cost of ignoring the needs of the status and non-offender. (Steinhart, 1996)

.. Special Problems

Even though status and non-offenders have committed no serious offenses, they are prone to behaviors and problems that are not amenable to easy fixes. For example, *chronic runaways* often flee non-secure placements. DSO regulations strictly limit the amount of time a runaway can be detained in a secure facility. As a result, many runaways are placed in residential care or mental health institutions because the court did not have the time or resources to find a more appropriate placement. (Steinhart, 1996)

In fact, *mental health placements* among status and non-offenders have increased since the DSO movement began. Additionally, there is concern that female status offenders are overrepresented in the mental health system. (Hertz, 2001)

Some status and non-offenders, especially *chronic offenders*, have serious emotional and

behavior problems that may not be addressed through community-based interventions in non-secure facilities. Although more effective, youth-focused interventions are often available in certain secure juvenile facilities, the courts are prohibited from placing children in any secure facility. (Holder & Kapler, 1995)

These and other concerns regarding secure/non-secure detention and placements sometimes make it impossible for the courts to act in the *best interest of the child* -- the underlying philosophy behind the DSO movement.

One important objective of the DSO movement is to intervene early in the cycle of misbehavior, when offenses are relatively minor. In theory, juveniles who receive optimal care should have substantially reduced *recidivism rates*. Yet Ann Schneider, who conducted a national study of recidivism rates among juvenile status offenders, did not find that to be the case. Part of this can be attributed to the fact that some states have relabeled status offenders and are now handling them as full-fledged delinquents. Another reason is that Schneider's study was conducted in the mid-1980s, before most states had fully implemented substantial changes related to DSO mandates. (Schneider, 1985)

Status Offenders in Missouri: A Short History

Missouri juvenile law was primarily enacted prior to 1922. Almost all juvenile court law referred to delinquency as both criminal and non-criminal conduct. Juvenile statutes were not revised until the mid-1940s, when Governor Phil Donnelly appointed a Children's Code Commission. The Commission was charged with examining state law concerning dependent and delinquent children. It was responsible for making recommendations -- based on the needs of children -- regarding the revision of outdated juvenile laws and the enactment of new ones.

Missouri was one of the first states to distinguish between delinquency and status offenses. In 1957, the General Assembly enacted the Missouri Unified Juvenile Court Act, which gave the juvenile court exclusive jurisdiction over specific categories of juvenile cases. The categories: delinquency, abuse and neglect, status offenses and adoption. As a result, juvenile courts were empowered, for the first time, to treat status offenders and juvenile delinquents differently. This was followed in 1967 by the U.S. Supreme Court's decision, *In re Gault*, which allowed juvenile courts more latitude in dealing with status offenders.

The JJDP Act of 1974 required Missouri to further alter the way it treated juveniles in general and status offenders in particular. A key issue in the beginning was ensuring that juveniles were not detained for longer than the short period allowed by law in jails and other detention facilities for adults. This was a problem because hundreds of Missouri juveniles were detained in rural county jails each year. The reason: a lack of separate juvenile detention facilities or other appropriate, non-secure shelter and residential diagnostic programs. (St. Louis and Kansas City already had been required to establish juvenile detention facilities.) In rural county jails, juveniles were frequently separated from adult inmates by site and sound, meaning they were in separate cells in another part of the facility. But the length of juvenile detainment within adult jails -- simply because there were no other viable options in the community -- was a hurdle that Missouri would have to overcome. (Abrams, 2003)

Today, Missouri has five non-secure detention facilities, which serve only five of the state's 45 juvenile circuit courts. (Appendix G) Circuits without non-secure facilities -- such as foster homes and detention and residential care facilities -- must scramble to find appropriate placements for status and non-offenders. This includes 1) sending them to other communities with non-secure facilities, or 2) securing a placement in a local juvenile group home, which typically has limited openings. When an appropriate non-secure placement is not available, which is frequently the case, Missouri juvenile circuits usually resort to less effective options -- such as intensive probation and supervision -- which are more likely to result in repeat offenses among youth.

Missouri Law Related to Federal DSO Mandates

Missouri responded to federal DSO mandates primarily through the Missouri Revised State Statutes.

Chapter 211 of the revised statutes gives juvenile courts within the state exclusive jurisdiction over status and non-offenders in need of care and treatment. It reinforces the idea that status and non-offenders should be placed in the least restrictive environment, and that psychological or psychiatric evaluations should be used as necessary to determine the degree of restriction appropriate for each child. Chapter 211 also forbids the placement of these juveniles in secure facilities for more than 24 hours, except under very limited situations as determined by a valid court order. (Appendix A)

The revised statutes allow for both informal and formal handling of status and non-offenders as provided for in 211.081. In many instances, status offenders in Missouri are dealt with on an informal basis, thus avoiding a court record for the child.

If formal court action is necessary, statute 211.032 allows for a protective custody hearing, where the court shows just cause for holding the child out of the custody of parents, guardians or custodians. Any subsequent court-ordered, out-of-home placements must be in a non-secure facility as described in 211.031. A child may also be returned to his parents' home, where either the court or a court-appointed agency will help the family adjust and monitor the child's behavior, as provided for in statute 211.181.

Some status offenders cannot be kept at home due to problems within the family. They may be placed in the care of the Division of Family Services (DFS), which will in turn place them in a DFS foster home or residential care facility. Juvenile facilities under the umbrella of DFS are governed by the "reasonable efforts" standard, which requires them to utilize all available services necessary to meet the needs of the juvenile and his or her family.

Missouri will pay counties operating a home for neglected or delinquent children \$14 - \$37 per day, according to section 211.156. The current amount is \$14 per day based on the state appropriation levels -- not nearly enough to support a juvenile facility in rural areas that tend to deal with relatively small numbers of children.

The court also places status offenders under the care of the Division of Youth Services (DYS). In addition to its day treatment program, DYS also operates two non-secure, residential group homes, as designated in statute 219.089.

Missouri adheres to an indeterminate juvenile commitment policy. This means that the facility in which a child is placed determines when the child will be released. Under 211.231, the court must be apprised of release recommendations. If a placement does not fit a child's need, modifications to the original court order can be made under statute 211.207.

If the court determines that a child needs psychological evaluation, it can require said evaluation, according to 211.161. Revised statute 211.201 clearly defines how placements for children requiring in-patient psychological or psychiatric treatment should be made. Statute 211.202 explains the evaluation process, and 211.203 and 211.206 detail how the court is to be notified of the child's condition.

Status and non-offenders with problem behaviors, who are under the care of the DFS or DYS, are often referred to the Department of Mental Health (DMH) by these agencies. Chapter 630 outlines the DMH's processes. (Parents sometimes admit their children to DMH for evaluations and placement independent of the juvenile court.)

As outlined above, the Missouri Revised State Statutes address federal DSO mandates. They set forth clear guidelines re the placement of status and non-offenders for the juvenile courts as well as for the DFS, the DYS and DMH.

**STATUS OFFENDERS/NON-OFFENDERS IN MISSOURI:
A CURRENT SNAPSHOT**

Missouri Juvenile Courts' Disposition of Referrals

In 2001, there were a total of 9,413 Missouri juvenile court referrals that resulted in out-of-home placements. The largest portion, 7,109 or 75 percent, represented status and non-offenders. This included 6,135 abuse, neglect and custody (non-offense) referrals as well as 974 status offense referrals. Law violations (22 percent) and court order violations (3 percent) accounted for the remaining juvenile referrals.

(Missouri Juvenile Court Report, 2001)

The focus of this report will be on the more than 7,000 status and non-offender out-of-home placements.

Missouri's Compliance with DSO Mandates in 2001/2002

The following information about Missouri's compliance with federal DSO guidelines, which was obtained from the Missouri Juvenile Justice Association (MJJA), is for the period July 1, 2001, through June 30, 2002.

Criterion A: Deinstitutionalization of Status Offenders

States must not exceed 29.4 violations per 100,000 youth under age 17. A violation constitutes an inappropriate secure placement of a status or non-offender in juvenile detention facilities, local adult jails and lock-ups, and other juvenile facilities in Missouri.

Missouri's Violation Rate

5.8 per 100,000 youth under age 17 pursuant to Section 223 (a) 12 of the JJDP Act.

Missouri's rate -- which is considerably below the federal maximum -- is based on a total of 81.23 violations in a state with 1.4 million youth under age 17 (2000 Census), or 81.23 divided by 14.

Cause of Missouri's Violations

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Valid court order violations can occur when a status or non-offender is temporarily put in a secure detention facility for behavior, such as assaulting a staff member, that violates the conditions of a court-ordered, out-of-home placement. No child can be held in secure detention for longer than 24 hours (not including weekends and holidays) without a court order. However, in many rural areas in Missouri, juvenile courts do not meet every day, which sets the stage for a DSO violation.

Out-of-state runaways occasionally are held in secure detention for more than 24 hours because their parents couldn't get to the facility fast enough to retrieve their youngsters.

What DSO Compliance Does and Does Not Cover

As indicated, Missouri is currently in compliance with the federal DSO mandate as outlined in Section 223 (a) 12 of the JJDP Act. Compliance with federal guidelines is monitored by MJJA. The association monitors the placement of status and non-offenders in juvenile detention facilities, local adult jails and lock-ups, and non-secure juvenile facilities in Missouri.

Missouri's annual DSO violation rate -- as well as the breakdown of individual violations -- does not include any potential violations that occurred in state mental health facilities and DFS juvenile residential care facilities, where status and non-offenders are frequently placed. That's because Missouri, like many other states, is not yet monitoring DFS or mental health facilities for DSO compliance.

Juvenile Courts' Processes for Handling Status Offenders

Status Offenders Served by Missouri Juvenile Courts in 2001

In 2001, 19,977 youth were referred to the juvenile court as status offenders, accounting for nearly a fourth of all juvenile referrals. Eighty-six percent of status offender referrals were handled informally and 14 percent were handled formally.

(Although the current number of status offenders is lower than in recent years, it does not reflect a downturn in status offenses. The declining numbers can be attributed to the fact that Missouri recategorized certain status offenses, such as smoking in public places and curfew violations, putting them in the municipal juvenile offense category. This new juvenile offense category accounted for 2,814 referrals in 2001. Before the category change in 2001, total Missouri status offenses were as follows: 22,728 status offenses for 2000; 24,570 for 1999; and 23,749 for 1998 -- all of which included the curfew violators. This shows that there has been a consistent trend in status offenses over the past four years.)

Least Restrictive Approach

Missouri state statute guidelines require juvenile courts to use the least restrictive interventions and sanctions possible in handling status offender cases. This means returning children to their homes and families whenever possible. If an out-of-home placement is necessary, said placement must be in a non-secure facility, where the movements and activities of those in custody are controlled or "secured" entirely by staff, rather than by implements or physical barriers.

Informal Handling of Status Offenders

The best way to keep status offenders in their homes and families intact is through informal handling, which is also known as informal disposition. This can be achieved through a variety of mechanisms, including unofficial probation, mediation or diverting the child and parent to appropriate services within the community. Such services range from community-based day treatment programs to counseling for the family or even out-patient mental health services. Many believe that most status offenses are essentially family problems. Therefore, status offenders and their families are best served with the least outside intervention, so that parental authority can be maintained.

In 2001, 17,062 or 17 in 20 status offenders were handled informally by the court. The disposition of their cases was as follows:

6,869 or 40 percent:	Adjusted without supervision
3,192 or 19 percent:	No action
3,132 or 19 percent:	Adjusted with supervision
1,742 or 10 percent:	Rejected by the court

1,570 or 9 percent: Referred to another agency for services
557 or 3 percent: Referred to another juvenile court

(Missouri Juvenile Court, 2001)

Formal Disposition of Status Offenders

Informal disposition is not appropriate for a relatively small proportion of status offenders. Some may not be able to return home because the family or home environment is unstable. In other cases, the nature of a status offense may require intervention that is more restrictive than that which is available through informal disposition.

In 2001, 2,915, or three in 20 status offenders, were handled formally by the court. The disposition of their cases was as follows:

1,132 or 39 percent: Kept in their current homes
974 or 34 percent: Out-of-home placements
286 or 10 percent: Dismissed
266 or 9 percent: Charges found not to be true
218 or 7 percent: Miscoded
39 or 1 percent: No services provided

(Missouri Juvenile Court, 2001)

Graduated Sanctions

As indicated by the disposition of status offender cases in 2001, a variety of graduated sanctions make it possible for the courts to keep most status offenders in their homes, even when their cases are formally handled.

This is how graduated sanctions might work for a child who becomes a chronic status offender: A petition is filed stating the subsequent violation by the child, which is then formally processed in the court. Even with the formal disposition, a child may get probation with intensive supervision and some form of social services. Again, the court imposes the least restrictive sanction possible.

Out-of-Home Care Among Status Offenders

When out-of-home care is required, the courts select from a variety of non-secure options. In 2001, for example, 1,168 juvenile status offenders (including pre-hearing placements) were referred to the following key out-of-home placements:

402 or 34 percent: Division of Family Services
236 or 20 percent: Division of Youth Services
194 or 17 percent: Juvenile court residential care

125 or 11 percent:	Supervised probation
89 or 8 percent:	Private agency placement
27 or 3 percent:	Care of a relative
8 or 1 percent:	Department of Mental Health

This referral outcome data is further broken down by circuit and county in Appendix B. (Missouri Juvenile Court, 2001)

Chronic Offenders

Some status offenders seem to be incorrigible. Their offenses may be minor, but they have, so far at least, refused to temper erratic, unruly or aggressive behavior.

As a group, runaways pose the greatest problem to the court. They are a danger to themselves if left on the streets, yet they tend to flee from each placement by the court. To protect chronic runaways, courts use various approaches, including trying multiple placement options to see if one can be found that will contain the runaway. In 2001, females had the highest number (2,734) of runaway referrals.

A problem area for male status offenders is engaging in behavior injurious to themselves or others. More than 3,200 male status offenders were referred to the court for this behavior in 2001. These and other chronic problem behaviors among status offenders often require extra work to understand and root out. (Missouri Juvenile Court, 2001)

In Missouri, some chronic status offenders are put in the custody of the Division of Family Services (DFS) when there are no non-secure, out-of-home placements available in group homes and shelter facilities in the area served by the court. DFS will try to place the youth in one of its foster homes or residential care facilities. However, because there are a limited number of non-secure facilities in Missouri, finding appropriate placements for status offenders -- especially runaways -- is a growing problem for the courts.

Valid Court Order

Although both state and federal laws require that status offenders be placed in relatively unrestrictive, non-secure care, there are certain circumstances when a status offender may be placed in secure, more restrictive care for longer than the time allowed by law.

For example, after being placed under supervision by the court, a youth may violate one or more of the terms of his/her supervision rules, such as assaulting another youth or fleeing a placement. When this occurs, the status offender can be held in secure detention for up to 24 hours *without a valid court order*, during which time he/she must be taken back to court for a probable cause hearing on the violation.

If it is determined that the status offender has violated the court order associated with his/her initial placement, then a second court order can be issued allowing the youth to be held longer in secure detention. (For this to occur, at least one of the following conditions must also be in play: The youth has a record of 1) willfully failing to appear at a juvenile court proceeding; 2) violent conduct resulting in physical injury to self or others; 3) leaving a court-ordered placement, other than secure detention, without permission. (RSMo 211.063 (1))

A valid court order is a legal way to restrain for more than 24 hours chronic runaways as well as other status offenders whose behavior is considered dangerous. It was added to the Missouri statutes in 1993 to assist juvenile court judges in handling the chronic status offender.

In addition, some offenses committed by status offenders might rise to the level of a juvenile offense. If this occurs, the court may deem the youth to be a delinquent, and transfer him/her to a secure facility.

Juvenile Courts' Processes for Handling Non-Offenders

Juvenile courts also deal with the non-offender, including abused and neglected children as well as those in the custody of the state due to dependency. In 2001, there were 17,478 non-offender referrals to juvenile courts in Missouri. This included 3,983 referrals for abuse, 9,120 for neglect and 4,376 for custody.

(Missouri Juvenile Court, 2001)

These non-offender cases were disposed in the following key areas:

6,135 or 35 percent:	Referred to out-of-home placement
2,720 or 16 percent:	Referred to another agency for out-of-home placement
1,869 or 11 percent:	Referral rejected by the court
1,489 or 9 percent:	Dealt with informally
1,381 or 8 percent:	Left in home
1,142 or 7 percent:	No formal action taken
859 or 5 percent:	Dismissed
404 or 2 percent:	Referral found to be untrue

The remaining 7 percent were disposed in a variety of ways as outlined in Appendix C. (Missouri Juvenile Court, 2001)

Most out-of-home placements for non-offenders were made through the Division of Family Services. DFS places children in foster homes or residential care facilities as well as, when appropriate, with relatives.

Placements with the Division of Family Services

The Division of Family Services (DFS) provides out-of-home placements and other services only to children without a delinquent record, meaning they are either status or non-offenders. DFS has provided placement information for FY 2002, when 18,959 children were under its care. The last known placement or status of these children during that report period was as follows:

6,091 or 32 percent:	Foster care
3,042 or 16 percent:	Relative's home
2,540 or 13 percent:	DFS licensed residential treatment facilities
2,258 or 12 percent:	Court-ordered, non-licensed placements
446 or 2 percent:	Runaway status
294 or 2 percent:	Mental health facility

The remaining youth in the custody of DFS were in other types of placements, such as specialized foster homes, independent living or transitional living facilities.

There has been a steady increase in the number of children in active DFS custody. In 1998, there were 16,503 children in DFS's custody. That number has increased every year since then. By 2002, nearly 19,000 were being served by DFS -- 2,456 or approximately 15 percent more children than in 1998.

(Missouri Children's Services FY 2002 Report)

Placements with the Division of Youth Services

The juvenile courts in Missouri refer roughly 20 percent of status offenders requiring out-of-home placements to the Division of Youth Services. Although DYS has both secure and non-secure facilities, the agency places status offenders only in its six non-secure group homes, as required by its policy manual. Each of these homes offers only non-secure placements, unlike DYS's 18 other facilities, which have higher levels of security, ranging from moderately to highly secure.

As of July 2003, DYS was housing 78 juveniles in its community-based group homes, plus another 203 were attending DYS's day treatment programs. These numbers are average due to a budgeted capacity of 255 for DYS's day treatment facilities and 70 for the agency's community care group homes.

The average age of a youth committed to DYS is 15.1, with the vast majority of DYS youth being 14-16. However, children as young as 10 have been in DYS care.

Court referrals for status offender placements typically involve more serious status offenses or a status offender with a previous record of juvenile delinquency. One reason is that DYS facilities have a wider range of programming for troubled youth. In 2002, for example, out of 1,286 youth committed to DYS, only 145 were status offenders. And seven in eight of these status offenders had prior delinquent offenses on their records, suggesting that more intensive deterrent and rehabilitation services would be useful.

DYS has specific policies for dealing with issues related directly or peripherally with DSO mandates. These include the definition of a status offender, risk assessment procedures, transfers from a community care home to a residential facility, and placement exceptions that are tied to the DSO mandates.

Upon commitment by the court, the DYS service coordinator shall conduct within five business days, a comprehensive assessment of the youth and the youth's family. Issues of concern addressed by the coordinator on the intake form include an initial health screen, a risk assessment, a seriousness scale, and an assessment summary to determine the proper placement of a youth. DYS's regional administrator must approve any exceptions to the usual placements. According to DYS policies, status offenders are never to be placed in secure facilities or programs. (DYS Policy, 2000)

Before a transfer from community care for a substantial violation, there must be a recommendation by the service coordinator for placement in residential care. A transfer hearing must be conducted by the regional administrator or designee from the committing region upon the request for a hearing. At issue is whether the youth will benefit more from the programs at the recommended transfer site than from the current program. There can also be an administrative transfer if a change in placement may better serve the needs of the youth. (DYS Policy, 2000)

These and other DYS decisions are not subject to the approval of the juvenile court because the court relinquishes jurisdiction when it refers a juvenile to DYS.

SURVEY DATA ANALYSIS

We surveyed Missouri juvenile courts and other relevant state agencies -- as well as the placement facilities they contract with -- about their practices regarding the out-of-home placement and care of status and non-offenders. We also surveyed the other 49 states about a variety of issues related to federal DSO mandates.

Our intent: to determine how federal and state DSO policies work in the real world. This includes identifying areas where practice and policy may be in conflict and what might be done (see Recommendations section) at both the state and federal levels to better serve the needs of status and non-offenders.

Missouri Juvenile Court Judges

Juvenile judges in Missouri play a vital role in the placement of status and non-offenders in cases formally handled by the Circuit Court. Once an out-of-home placement is made by the court, there is a system in place to notify judges of changes in placements either within a facility or from one facility to another. The goal is to give judges an opportunity to intervene if a youth originally assigned to a non-secure placement ends up in a secure placement. This is important because compliance with the DSO mandates starts with the original placement of a youth and continues through any subsequent moves within or between facilities -- as long as the originating charge has not been modified.

Survey Results Among Juvenile Judges

Juvenile court judges in the 45 circuits of Missouri were surveyed; 30 circuits or 66 percent responded. The total number of respondents was 35 because we received two responses from five circuits where there were multiple juvenile judges. (Appendix D)

According to the responses, court ordered out-of-home placements depend on a number of factors, including the nature of the offense among status offenders as well as the particular circumstance of the non-offender. As a group, judges are open to making both secure and non-secure placements, depending on the situation.

Nine in 10 responding judges said that they were notified by residential facilities of any change in the placement of a status or non-offender within a facility (from a less secure to a more secure area). More than eight in 10 responding judges said they were notified if the transfer of a youth from one facility to another resulted in a change from a non-secure to a secure placement, a facility violation.

(Transfers between facilities most often occur when a youth's behavior becomes a cause for concern, resulting in a move to a mental health facility or another residential facility.)

Although mental health facilities in Missouri and across the nation are by necessity secure, any placement of a status or non-offender in a mental health facility would be a technical violation of DSO mandates. However, Missouri juvenile judges seemed to be more influenced by the best interest of the child than the technicalities of the law. Nearly six in 10 said they would be willing to place a status or non-offender in a mental health facility to deal with behavior problems.

Division of Family Services

Placement Policies Re Status and Non-Offenders

The Division of Family Services (DFS), which operates under the Missouri Department of Social Services, serves the needs of non-delinquent children (status and non-offenders) referred by the court. DFS is responsible for developing foster homes and residential care facilities, where many status and non-offenders who cannot return to their homes for a variety of reasons are placed. Policies and processes regarding the care and placement of these children are based on the Missouri Revised State Statutes, Chapter 210. (Appendix A)

Several key considerations underlie DFS's out-of-home placement policies. The first is ensuring that status and non-offenders are placed in the least restrictive environment, which resembles family life as much as possible. The "reasonable efforts" policy is another way of making life more pleasant -- and reunification with the family more likely -- for status and non-offenders. It requires DFS to exercise diligence in utilizing all available services and other resources to meet the needs of children in out-of-home placements as well as their families.

DFS is required to periodically review the status of each child in an out-of-home placement to ensure that all efforts are being made to return the child to his/her home. Despite these efforts, some children will not be reunited with their families for a variety of reasons, including substance abuse, child abuse or other problems that make the family environment an unstable or dangerous place for the child.

DFS Residential Contract Facilities

DFS contracts with scores of residential care facilities to provide out-of-home care to status and non-offenders. Of the 64 facilities that responded to our survey, only 48 took a wide range of status and non-offenders. (Appendix E)

The length of time a youth is placed in a residential care facility is an ongoing concern because, in the past at least, it is believed that some status and non-offenders remained in care longer than was necessary. This is known as languishing in care.

Eight in 10 of the responding facilities indicated that the length of a child's placement was determined either by the facility and staff or a treatment team. In the remaining facilities, the length of placement was determined by the court, DFS or a combination of the two.

Another area of concern was the various levels of security available in the residential care facilities surveyed. Security levels one and two -- non-secure and mildly secure -- are considered to be essentially non-secure and, therefore, acceptable placements for status and non-offenders. Level three -- somewhat secure -- is a gray area. And level four -- very secure -- is considered an unacceptable placement for status and non-offenders.

Nearly seven in 10 survey respondents offer multiple levels of security within their facilities. Two-thirds had levels three or four and only one-third had non-secure placements at levels one and two. (These proportions represent facilities, not number of beds.)

DYS currently contracts with 121 residential care facilities, which contain a total of 3,500 beds. Some 1,400 or 40 percent of these beds are considered level four, very secure beds, which are inappropriate for status and non-offenders. That leaves only 2,100 beds that are considered non-secure (levels one and two) or somewhat secure (level three).

We were unable to determine the population of each security level within DFS's residential care facilities. However, this is what we do know, based on November 2002 data from DFS's year-end report: Of the nearly 19,000 children in out-of-home placements, 2,540 were in residential care facilities. According to DSO guidelines, all of these youngsters should be in non-secure placements. (Missouri Children's Services, FY 2002)

Based on our study, we learned that status and non-offenders are typically placed in non-secure beds within residential care facilities. Problems related to the security level of a child's placement generally occur after the initial placement is made. For example, a youth may run away or act out in ways that cause him to be a danger to himself or others. Some residential facilities with higher levels of security will then move a child with behavior problems to a more secure placement. Do these facilities notify DFS of the change in the placement security status of the child? More than nine in 10 facilities that responded to the question answered in the affirmative.

The survey and related research revealed an ongoing dilemma for both DFS officials and the staff of residential care facilities: What to do about children who may need, at least temporarily, to be in a secure placement to, for example, stop them from running away or hitting another child or staff member.

DFS serves only status and non-offenders, children without a record of juvenile delinquency. This includes youngsters who have committed acts that would not be crimes for adults, such as running away from home or skipping school. It also includes children who have done nothing wrong but require DFS's care because, due to abuse, neglect or other circumstances beyond their control, they cannot remain with their families.

Under DSO guidelines, these children must be in non-secure placements. However, if youngsters who act out (not all that uncommon for a child in an unfamiliar setting) are returned to court, a judge cannot order a more secure placement without adjudicating the child as a delinquent. Once a child is considered to be delinquent, he or she would be placed in a more harsh, correctional type of facility.

Both DFS and residential care staff are reluctant to take steps that would remove a child from a facility that prioritizes treatment over punishment. Instead, they may decide to put an aggressive or belligerent child in a more secure placement within a facility designed for status and non-offenders.

Department of Mental Health

Although we surveyed Department of Mental Health (DMH) facilities where youth are placed, very few responded. Several stated that they do not keep any data on whether a youth referred by the court is a status offender, non-offender or juvenile delinquent offender. As a result, most of the information in this section is based on a study conducted by Ed Morris, Director of Children and Youth Services for DMH. (A limited amount of data about status and non-offenders referred to mental health care is included in the section *Status Offenders/Non-Offenders in Missouri*.)

Missouri's approach to juvenile mental health is different in several respects from adult mental health, where the issue is one of public safety: Is the adult a danger to himself or others? By contrast, juvenile mental health, as well as the entire juvenile system, is dictated by the *parens patriae* theory, meaning the state functions as a father, acting in the best interest of the child.

The DMH has very structured policies on the acceptance of a youth for evaluation or in-patient services. These are based primarily on the Revised State Statutes for Missouri in Chapter 630 and cross-indexed in Chapter 211. (Appendix A)

If the state suspects that a child under the umbrella of its juvenile system has a mental disorder, then an evaluation can be arranged through the DMH. DMH has 20 days to conduct this evaluation, which may be on an out-patient or in-patient basis. The 20-day policy also helps to assure that juveniles who must be sent out of their communities for mental health evaluations are not confined unnecessarily. At any time during this 20-day period, the DMH professional conducting the evaluation may determine that the juvenile is no longer in need of in-patient care and make arrangements for discharge/placement.

At the end of the 20-day evaluation period, the juvenile court may set the matter for a hearing, depending upon the recommendation of the mental health professional. (Unlike adults, a child cannot voluntarily admit himself.) At that hearing, the interests of the state are represented by a deputy juvenile officer and the interests of the child by a *guardian ad litem* (GAL), typically a lawyer or volunteer. Some juvenile cases do not automatically qualify for the appointment of a GAL. This is another major difference in adult/child mental health policies: adults are guaranteed legal counsel, and juveniles are not.

Once a child is committed to a mental health facility for care and treatment, his/her case must be reviewed annually. (Adult cases are reviewed three times during the first year.)

The procedures for discharging juveniles from a mental health facility could inadvertently cause a child to *languish in care*, remaining in the mental health system longer than necessary. Because Missouri juvenile courts often make indeterminate dispositions, it is usually up to the mental health facility to determine when a juvenile no longer requires in-patient treatment. (The facility may arrange ongoing out-patient care as needed.)

The potential problem in the discharge process is finding an appropriate placement for the juvenile once in-patient treatment has been completed. This is a fragile period for the youth, and he/she will require support to maintain a positive mental health status.

If the child was in residential care prior to treatment, it is not uncommon for the residential care facility to refuse to re-admit him/her. Returning a child to parental control may not be an option, either because the parents refuse to take the child or the home environment might undermine the child's mental health progress. Unfortunately, it is sometimes difficult for mental health officials to find a placement that is conducive to the mental health, in addition to the welfare and safety, of the child.

Notice of the placement or discharge shall be sent to the juvenile court, if the court initially committed the child to the mental health facility.

One final concern re juveniles and mental health care: the number of mental health beds available to children is beginning to decline as a result of Missouri's current economic woes.

DSO Compliance in Other States

Like Missouri, all other states must comply with DSO mandates. At the moment, three states -- Ohio, South Carolina and Washington -- are out of compliance, according to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), which is responsible for monitoring DSO compliance among states.

To find out more about other states' efforts to comply with DSO mandates, we surveyed the 49 states. Thirty-three or approximately two-thirds replied to our initial written survey, including the following: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia and Wisconsin. (Appendix F)

Because implementing DSO mandates can be very costly, we asked if states were currently funding any programs targeting DSO mandates. Thirteen or nearly four in 10 states said they did. The specific number of programs varied greatly from state to state, ranging from 600 in Texas to one in North Carolina. Additionally, five states partially funded programs that were related in some way to DSO mandates.

According to the survey responses, states budgeted the following amounts for programs related to DSO mandates: Alabama \$30,000; Alaska \$149,000; Hawaii \$980,000; Illinois \$500,000; Kentucky \$600,000; Louisiana \$235,844; Maryland \$2,429,101; Nebraska \$150,000; New Hampshire \$150,000; North Dakota \$500,000; Ohio \$1.4 million (2000-2001); Oklahoma \$1.7 million; Oregon \$39,000; South Carolina \$826,220; and Utah \$17,000.

Ohio, which is currently out of compliance with DSO mandates, appears to have funded 19 different DSO-related programs that merit mentioning. These include mediation, diversion programs for youth and parents, staff for more intensive probation services, emergency foster care for status offenders, a gender-specific program for female runaways, electronic monitoring, shelter care beds, truancy prevention program, group counseling program, intake screening program, delinquency prevention program, as well as DSO-related data collection for the state.

Had states enacted specific legislation to make DSO a statewide law? Twenty or six in 10 had already done so and one was in the process of changing its statutes. But 10 states (30 percent) have taken no statutory action designed to mandate DSO compliance.

The 33 states that responded to the initial written survey were contacted by phone with a more in-depth follow-up survey. One objective was to gather more details on DSO as it related to mental health placements: Were these placements included in state DSO monitoring and, if so, how was it done? A second objective was to secure information about how states monitored the residential care facilities typically operated by the state's Department of Social Services or a department with a similar name. All 33 states provided at least some level of information.

Regarding the mental health issue, only eight or about a quarter of the states participating in the survey indicated that they monitored their state's department of mental health placements for DSO compliance. The states that do include Hawaii, Iowa, Oklahoma, New Hampshire, New York, North Carolina, South Carolina and West Virginia. Alaska is not currently monitoring for DSO compliance, but plans to start in 2004. Massachusetts is unsure because the state's compliance monitor just left his position.

Hawaii and Iowa monitor by site visits and data collected yearly, while New Hampshire monitors by data reports only. West Virginia monitors 10 percent of the mental health facilities by site visits on an annual rotating basis. In New York, the Department of Corrections uses site visits to monitor mental health facilities. Although Oklahoma is monitoring mental health facilities, there was no explanation about how this was done. South Carolina does monitor but said it was a low priority for the state. And North Carolina, which began monitoring in September 2002, is currently developing a civil commitment process for juveniles.

In addition, two states allow others to monitor their mental health facilities, and Arizona asks facilities to voluntarily report DSO violations. Montana relies on the state's Department of Health and Human Services' quality assurance personnel, who are trained in DSO. Because these individuals regularly check licensing in mental health facilities, they are in a position to report DSO violations.

Despite these efforts, 23 states or seven in 10 are not monitoring their mental health placements. Nearly half responded to the monitoring question with "not at this time." Nebraska is establishing a monitoring procedure, but it is not yet in place. Five states use the civil commitment process for juveniles -- which eliminates DSO compliance issues -- and some use it in combination with other practices. Other responses:

- .. Alabama Juvenile judges commit juveniles only for short-term care.
- .. Maine The state divested status offenders, meaning they are no longer in the juvenile justice system. As a result, Maine no longer has to worry about DSO compliance.
- .. Utah The state claims to be exempt because 1) some commitments are voluntary, and 2) Utah provides due process protections for those juvenile commitments that are not voluntary.

Regarding the DSO monitoring of placements in residential facilities operated by state social services departments, 13 or four in 10 states indicated that they did monitor these placements. The majority of states monitored via site visits. California stated that it did not license secure facilities, implying that status and non-offenders would never be in a secure placement. Three states depend on the monitoring of others to complete their DSO reports.

Twenty-nine or six in 10 states do not at this time monitor for DSO compliance for placements in residential care facilities operated by their social services departments. They offered a wide range of explanations:

- .. Like California, which does monitor for DSO compliance, several states do not license secure facilities. Therefore, they ought to be in compliance.
- .. Some states never contract out care and thus handle all placements in their own facilities.
- .. New Hampshire reported that state juvenile judges self-monitor by controlling placements.
- .. Maine, which has divested all status offenders, does not monitor for DSO, although the state does hold out-of-state runaways.
- .. Another state said it monitored only one site within the state each year. This state is currently out of compliance.

Some state statutes allow the secure confinement of status offenders, according to information provided during the survey.

- .. New York and California have public areas -- such as malls, airports and local transportation hub facilities -- where runaways and other juveniles could potentially be held in secure confinement. Both states monitor these types of facilities for DSO compliance.
- .. Washington allows up to five days of secure confinement for chronic runaways under the Becca Law, named after a juvenile runaway who came to a bad end. The state is committed to protecting runaways from becoming victims of crime.
- .. South Carolina allows up to 90 days of secure confinement for status offenders.

Note: Both Washington and South Carolina are currently out of compliance with the federal DSO mandates.

Summary

The information from our surveys indicates that many states are not monitoring their mental health or residential care facilities at this time. Most of those that are monitoring find it to be a difficult, arduous process. Some states rely on others to do the monitoring, while others have changed some of their state laws and policies in an effort to circumvent DSO compliance.

For example, a growing trend in some states is the use of civil courts to commit juveniles to mental health facilities. This eliminates a problem associated with status and non-offender placements under the juvenile court system: that virtually all mental health facilities are by nature secure and, therefore, out-of-compliance with DSO mandates. Civil commitment ensures that troubled juveniles receive the mental health care they need without risking a state's DSO compliance status. However, the confidentiality of the child's record is no longer protected the way it would be by the juvenile court.

Some states redesignate the status offender to a delinquent offender as a way to ease or eliminate DSO compliance concerns. Other states, including Maine, remove status offenders from the

jurisdiction of the juvenile court. But in so doing, states would no longer be acting in the best interest of status offenders. Some former status offenders would receive services from their state's social service department; others would essentially be abandoned and left to their own devices. The good news is that, so far at least, most juvenile judges believe it is in the best interest of the child to remain in the juvenile court system.

MISSOURI'S EFFORTS TO COMPLY WITH FEDERAL DSO MANDATES

Missouri has worked hard to be in compliance with federal DSO mandates, initially by addressing the out-of-sight-and-sound issue, and later by removing juvenile status offenders from adult jails and correctional facilities. Current practices related to the care and placement of status and non-offenders reflect the evolution of Missouri law, from the 1970s through the 1990s, to better comply with national guidelines.

Conflict Between the Best Interest of the Child and DSO Mandates

Even though status and non-offenders have committed no serious offenses, they are prone to behaviors and problems that are not amenable to easy fixes. For example, a runaway may flee a non-secure facility or a child placed in an unfamiliar juvenile setting away from family and friends may have trouble adjusting to rules and authority. Meeting the unique needs of these youngsters is a challenge, especially in an era of DSO mandates.

Chapter 211 of the Missouri State Statutes requires the state to act in the best interest of the child should the court find it necessary to remove the youngster from the control of his/her parents. But DSO mandates and the best interest of status and non-offenders sometimes conflict.

.. Residential Care Facilities

All status and non-offenders must by law be placed in non-secure facilities, which are what DFS residential care facilities are considered to be. But what if a troubled youngster in a residential care facility begins acting out in ways that threaten his/her own safety or that of others? Staff may place the unruly youth at a higher, more secure level within the facility. (About four years ago, many residential care facilities added level four beds, which are considered to be very secure, to deal with the growing number of youth in their care with behavior problems. Although secure placements are prohibited under DSO guidelines, these facilities receive a higher level of reimbursement from the state for children placed in level four beds.)

Here's the dilemma. It is technically against the law to put a status or non-offender in a secure setting for more than 24 hours without a court hearing. However, a judge cannot order a more secure placement without adjudicating the child as a delinquent. Once a child is officially designated a delinquent, he or she will be placed in a more restrictive juvenile detention facility.

Juvenile officials are often reluctant to take steps that would remove a child from a non-secure facility that prioritizes treatment over punishment.

.. Mental Health Facilities

Some status and non-offenders have serious mental health problems. The issue: These children are not to be placed in a secure structure, yet every mental health facility in this state (and probably every state) is secure for good reasons. These include the need to separate juvenile patients from adult patients as well as to protect all patients from harm to themselves and others. However, if the courts follow DSO guidelines, then mentally ill children in the juvenile system will not get the in-patient mental health care they desperately need.

Financial Constraints

In the face of declining revenues, an issue that is affecting virtually every state, Missouri is finding it difficult if not impossible to fund the immense changes required to meet comprehensive DSO guidelines. For example, ensuring that every county or circuit in the state has a non-secure, shelter-type juvenile facility, with 24-hour staffing, is cost-prohibitive.

In interviews, juvenile officials throughout the state emphasized the need for more non-secure facilities to serve status and non-offenders, especially in rural areas. But in a budget-strapped state, they asked, where were the funds required to develop and operate these facilities to come from?

We looked at this question. Then we studied the operational and staffing costs associated with a non-secure facility, the Buchanan County Academy in St. Joseph, Missouri, which is part of the Fifth Judicial Circuit.

The Buchanan County Academy has a \$600,000 annual operating budget. (The proposed budget for 2004 is \$481,000, an acknowledgement of dwindling state resources.) The non-secure facility includes 30 coed residential beds plus a day school program with a capacity for 50 students. It has 37 employees, including the teachers for the school, under the St. Joseph School District.

Funding for the Academy comes from the following sources: 1) Fourteen dollars per day per youth from the state. That would amount to about \$153,000 if the residential facility was filled to capacity all year long. 2) Some 40 percent of the Academy's budget comes from title 4E for youth under the federal TANF (Temporary Assistance to Needy Families) program. TANF reimbursements are billed through the Division of Family Services.

Missouri picks up some additional costs by contributing personnel. For example, most of the detention aid staff members are state employees; their salaries are paid by the state. They work in three shifts, providing 24-hour coverage seven days a week -- a requirement for a facility to be deemed non-secure. The remainder of the facility's budget comes from the county under the auspices of the juvenile court.

Of special note is the fact that several years ago the Academy expanded and became coed to accommodate the growing female status offender population. The Academy's director, Ray Carson, said that when a youth's behavior becomes so uncontrollable that he/she was considered a threat to others, Academy officials recommended that the youth be taken back to court for further sanctions. Mr. Carson also discussed the need for more group homes for those youth who, for a variety of reasons, either cannot or should not go home upon release from the Academy.

Easy Fixes That Are Not in the Best Interest of the Child

There are several ways that Missouri could substantially reduce the need for costly non-secure facilities and/or ease the burden of federal DSO mandates.

- “ One option is to ignore status offenders and concentrate only on delinquent youth, as some states have done. However, it would certainly not be in the best interest of the youth of Missouri to turn our backs on truants, runaways and incorrigibles. Left on their own, there is little doubt that a growing population of runaways and street youth would roam unprotected in our communities, especially in the larger metropolitan areas. Without the juvenile court's intervention, these youngsters would soon become the throwaways in our society.

- “ Another undesirable option is to reclassify status offenders as delinquents. This would allow the state to place them in secure juvenile detention facilities, where conditions are harsher and more restrictive. As a result, relatively innocent status offenders would become entrenched in the juvenile justice system and would take on the stigma of a juvenile delinquent. Many studies have found that the labeling of youth is often a self-fulfilling prophecy, meaning juvenile delinquents might try to live up to the negative "bad child" stereotype.

RECOMMENDATIONS

Rationale for Change

Although Missouri is currently in compliance with federal DSO mandates, this compliance could be in jeopardy. The reason: Under the current state system, there is a growing potential for at least some status and non-offenders to be placed in secure care -- ranging from residential care to mental health facilities -- for longer than DSO guidelines allow. If violation rates associated with this mandate increase beyond that allowed by law, then Missouri is at risk of losing vital JJDP formula grants.

Changes must be made. The recommendations outlined in this section are designed to 1) meet federal regulations re the placement of status and non-offenders in non-secure facilities, and 2) honor the intent of the Missouri Juvenile Code to act in the best interest of the child.

This has been and will continue to be a challenge because there are times when DSO mandates and the best interest of the child are in conflict.

Recommendations

- .. Establish more non-secure facilities to house status and non-offenders.

Rationale

Missouri does not have enough non-secure facilities for status and non-offenders. This is especially true in some rural areas of the state where non-secure, out-of-home placement options are extremely limited. This opens the door to several negatives. First, some youth who need, at least temporarily, the structure and supervision of an out-of-home placement will not get it, although most will receive some level of lesser oversight from the court. Second, there is the possibility that a status offender might be placed in a secure facility when a non-secure one is not available.

What Should Be Done

There are two options that might work, either independently or in combination.

Establish large non-secure facilities, housing up to 30 youth, that could serve several circuits.

Establish shelter care and foster group homes, housing up to 10 youth, that could serve individual circuits.

The following state circuits need more non-secure facilities:

North East circuits: 1st, 10th, 12th, 41st and 45th

South West circuits: 25th, 37th and 42nd

North Central circuits: 3rd, 8th and 9th

Southwest circuits: 38th, 39th and 40th

Northwest circuits: 4th, 3rd and 43rd.

South East circuits: 33rd and 34th

Costs

This is the most expensive recommendation, but the one most needed to keep Missouri in compliance with federal DSO mandates. For example, the annual operation of an existing 30-bed non-secure facility in Buchanan County -- the Buchanan County Academy -- will be \$481,000 under the budget proposed for 2004.

Ways to Pay for More Non-Secure Facilities:

The Missouri General Assembly must appropriate funds for a large portion of the needed facilities.

The state should aggressively pursue federal and private grants to support this effort. For example, 40 percent of the Buchanan County Academy's budget comes from title 4E for youth under the federal TANF (Temporary Assistance to Needy Families) program.

- .. Reevaluate the Use of Residential Care Facilities That Have Level Four (Secure) Beds Available to Status and Non-Offenders.

Rationale

Of the 3,500 beds in residential care facilities under contract with DFS, 1,400 or 40 percent are considered secure beds, which are not appropriate for status and non-offenders. This creates two opportunities for DSO violations.

The law prohibits juvenile delinquents, youth who have committed serious criminal offenses, from being housed with status and non-offenders. However, at a time when there is a shortage of beds throughout the juvenile justice system, juvenile delinquents could now or in the future end up in a residential care facility with level four beds.

Facility staff might place a status or non-offender who is acting out in a level four bed *without a valid court order*. This too would be a violation of DSO mandates.

Repercussions

Residential care facilities without secure beds would inevitably result in an increase in the juvenile court's caseload. The reason: If a youth in a totally non-secure facility commits a delinquent act, the staff would not be able to place him/her in a more secure area within the facility. As a result, the court would have to hold a hearing to determine the best course of action.

- .. Ensure that In-Patient Mental Health Care Is Available to Status and Non-Offenders Who Need It.

Rationale

There are two key issues: First, due to state budget constraints, there are a declining number of mental health beds available to youth. This is especially a problem for minority youth who, research shows, frequently do not get the mental health care they need. Second, mental health care in Missouri (and in virtually every other state) is delivered in a secure setting for the safety of all involved. Yet DSO mandates prohibit the placement of status and non-offenders in secure facilities.

What Should Be Done

The state should reevaluate its mental health budget to ensure that there is adequate funding for mental health beds for juveniles.

The juvenile system should more closely monitor the transfer of status and non-offenders in mental health facilities. A major concern is that a facility that serves as the court-ordered placement for a youth does not transfer him/her to a mental health facility without notifying the court.

- .. Ensure That Youth Leaving the Mental Health System Are Transferred to Appropriate Placements.

Rationale

At the moment, mental health facilities struggle to find appropriate placements for status and non-offenders ready to be released from in-patient mental health care. Reasons range from the shortage of non-secure beds to the unwillingness of some juvenile facilities (and parents) to accept responsibility for youth who may have in the past exhibited belligerent, aggressive or other unacceptable behavior. When no appropriate placement can be found, these youth remain in the mental health system longer than necessary, a costly outcome for the state and an unhealthy situation for the youth.

What Should Be Done

The state should consider developing half-way houses and foster group homes specifically designed to meet the needs of youth transitioning from mental health care back into the community.

DFS could play a pivotal role in developing these transitional options.

- .. Provide the Additional Services That Chronic Runaways and Other Chronic Status Offenders Need to Get Their Lives Back on Track.

Rationale

Chronic status offenders, especially chronic runaways, are at high risk of becoming victims of the street, meaning they could be harmed or become further entrenched in delinquent behavior.

What Should Be Done

The juvenile system should offer all youth who need it intensive probation that *includes regular surveillance to ensure that youth are in compliance with the conditions of their probation.*

It should also develop other diversionary services -- such as the placement of a youth with a reliable relative -- that are viable options to residential care facilities, from which some chronic status offenders routinely flee.

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